



ORIGINAL

Industrial Telecommunications Association, Inc.

December 22, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: WT Docket No. 99-168

Dear Chairman Kennard:

The Industrial Telecommunications Association, Inc. (ITA) represents the interests of private wireless licensees and private carriers, a Federal Communications Commission constituency who utilize spectrum to support the well being of virtually every American citizen, even in under-served areas, without the necessity of federal regulatory compulsion.

The Commission is now in its 11th hour of deliberations on how best to utilize the "commercial use" allocation in the 746-806 MHz band while ensuring the interference-free operation for public safety users. Amazingly, some parties have waited until now to participate in this proceeding. Lacking credible analysis or facts, these parties resort to intimidation and threats to "sue" the Commission should it exercise its statutory authority by designating any portion of the 746-806 MHz band directly or even indirectly for internal use communications systems used by business and industrial companies. The FCC must not allow these distractions to impede it from discharging its Congressionally mandated duty to manage the spectrum in a manner that benefits all commercial uses of the spectrum -- not just the commercial mobile radio services -- and provides the necessary interference protection to public safety. Statements that the Commission should not support corporate welfare or that CMRS systems may accommodate the communication requirements of private wireless entities is pure hyperbole and serves to distract from the substantive allocation and assignment issues before the Commission. At the risk of being redundant, ITA once again offers the following principles to assist the Commission during its intensive deliberations:

- First and foremost, the 24 MHz of spectrum already allocated for the public-safety community must be protected from adjacent band operations. The communications infrastructure that is deployed in adjacent bands must accommodate this requirement without any doubt. The commercial use of the adjacent bands by a service that will

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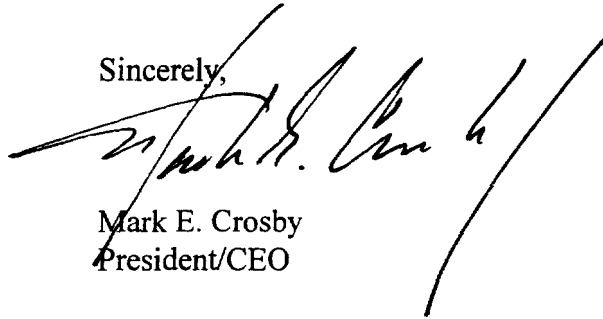
employ virtually identical technology will serve to enhance the prediction, avoidance and resolution of harmful interference to federal, state and local public-safety entities. A concurrent benefit is the production and distribution of communication products and associated devices that will provide economies of scale that will benefit the public-safety community through reduced equipment acquisition costs. An allocation of 6 MHz of spectrum located immediately adjacent to public safety spectrum at 746-806 MHz to commercial band managers, who will in turn disaggregate spectrum through efficiency based spectrum lease fees to entities who will operate technically equivalent systems supports this critical national spectrum management objective. These users have cooperated for decades to identify and address the potential for interference so as to maximize the use of the spectrum. There is absolutely no reason to suspect that this mutually supportive relationship will not occur within the 764-806 MHz band.

- Segregation of the 746-806 MHz band for internal use by commercial enterprises is a permissible interpretation of the Balanced Budget Act of 1997. Congress limited the allocation to “commercial uses.” It did not limit use of the allocation to CMRS licenses only. Congress did not use terms such as “telecommunications carrier” or “commercial mobile service” in its instructions to the Commission. If there have been any Congressional distinction drawn between commercial and private wireless use, they are irrelevant to the allocation decision in progress by the Commission.
- ITA’s band manager proposal, recommended by the Commission, envisions the literal use of the spectrum for “commercial use” – use by a band manager engaged in the commercial business of leasing spectrum to businesses in furtherance of their commercial activities. The Commission has on many occasions permitted the disaggregation of spectrum by commercial licensees to other parties. The band manager proposal is not innovative in that respect.
- It is specious to argue that the 1997 Balanced Budget Act precludes adoption of a band plan that would directly or indirectly provide spectrum for private wireless use. While section 3002(e) of the Conference Report discusses additional spectrum allocations for private wireless uses, it is important to interpret the language in context. Section 3002(e) refers to reallocated government spectrum, not the 746-806 MHz band, which is under the exclusive purview of the Commission. During the deliberations surrounding 3002(e), the consideration was to identify additional allocations for private wireless users on a non-auctioned basis, relying instead on spectrum lease fees. Given that the purpose of 3002(e) was to identify spectrum to be allocated through competitive bidding mechanisms, Congress was unable to pursue this effort “within the context of the reconciliation process.”
- The implication of equating “commercial use” with CMRS is that potential band managers and numerous individual businesses would be precluded from bidding for any of the 36 MHz at issue – a result that is at odds with Congressional intent and clearly contrary to the Commission’s decision in ET Docket No. 97-157 where it concluded

"private organizations or industry groups . . . will have the opportunity to seek the desired spectrum by participating in the auction."

While all allocation decisions are arduous, the Commission is in a position to accommodate the spectrum requirements of a number of communication sectors consistent with congressional intent to the benefit of thousands of commercial users of spectrum. I urge you to seize that opportunity. As always, please feel free to contact me should ITA be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby", is written over a large, stylized diagonal line that extends from the top right towards the bottom left.

Mark E. Crosby
President/CEO

cc: The Honorable Tom Bliley
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Commissioner Harold Furchtgott-Roth
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